STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing Nos. M-01/08-46
	)	& M-02/08-66
Appeal of	)	

INTRODUCTION

The petitioner appeals the decisions by the Department for Children and Families, Economic Services Division denying her applications for Food Stamps (M-01/08-46) and Medicaid (M-02/08-66). The issue is whether the petitioner's children are "living with" her within the meaning of the pertinent regulations governing those programs. The following findings are based on the petitioner's representations and on written documents she has provided to the Department during the course of her applications and appeals.[1] Inasmuch as the identical factual issues pertain to her eligibility for both Food Stamps and Medicaid, her appeals have been consolidated.

FINDINGS OF FACT

1. The petitioner is the divorced mother of three children. A Vermont divorce decree dated December 19, 2007,

[1] The petitioner filed her respective appeals in January and February 2008. The matter was continued for several months to allow the petitioner to obtain an attorney and to pursue potential remedies she might have in Family Court, and against the attorney who represented her in Family Court. Unfortunately, the petitioner was ultimately unable or unwilling to obtain such representation.

incorporates all the terms of a stipulation the petitioner entered into that same date with her ex-husband. The stipulation provides that the petitioner's ex-husband has "sole physical rights and responsibilities" for the children. The petitioner has "shared legal responsibilities" of the children, but the stipulation specifies only that the children "visit" with the petitioner from between two and ten nights a month. The stipulation includes provisions that the children will be "encouraged to spend equal time with the parties".

2. The petitioner maintains that "primary residence" was granted to her ex-husband "for the sole purpose of allowing the boys to remain in their school". She further maintains that "transportation issues" are the "sole reason" the boys do not, in fact, spend equal time at her house. She states that the children spent even more time with her in the summer (but she does not allege that, even then, they were in her home more than with her ex-husband).

3. Nothing in either the petitioner's representations or the written statements she has submitted from friends and neighbors indicates that any of the children since the divorce have spent even nearly 50 percent of their time at the petitioner's house. The petitioner maintains, however,

that the boys "eat 50 percent of the Food Stamps available" when they are at her house", and that even on the present schedule of time they spend at her house, she cannot afford to feed them without the additional Food Stamps that would be available to her if the boys were considered members of her household.

4. The Department has also determined that the petitioner is categorically ineligible for Medicaid for herself because she does not "live with" her minor children.

5. The petitioner maintains that she and her ex-husband consider their arrangement one that provides equally-shared "homes" to the children, not "visitation" (although her ex-husband did not participate in any way in these appeals).

ORDER

The Department's decisions are affirmed.

REASONS

The Food Stamp regulations define a household to include a parent "living with" their children. W.A.M. § 273.1(a)(2)(i)(C). Inasmuch as there is no mechanism in the regulations to pro-rate Food Stamps between more than one household, the Board has upheld the Department's policy in such cases of determining where the children eat a majority

of their meals. Fair Hearing Nos. 14,929 and 6,345. In this case, there is no claim or indication that the children have ever eaten more than 50 percent of their meals with the petitioner. Although the petitioner clearly faces a financial hardship in providing meals for her children when they are with her, it simply cannot be concluded that hers is the children's primary residence at this time.[2]

In order to be eligible for Medicaid, an applicant with a child under eighteen must meet "ANFC-related" (now RUFA) standards. W.A.M. § M301. The RUFA regulation at W.A.M. § 2242.2 defines an "eligible parent as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2302.1 includes the following provision regarding "residence":

> To be eligible for Reach Up, a child must be living with a relative or a qualified caretaker. . . The relative or caretaker responsible for care and supervision of the child shall be a person of sufficient maturity to assume this responsibility adequately. Parents and children living together must be included in the same assistance group.

[2] The petitioner maintains that at the time she entered into the divorce stipulation her attorney did not make her aware of the fact that ceding primary custody and residence to her ex-husband would result in her ineligibility for Food Stamps (and Medicaid). The matter was continued to allow the petitioner to explore her legal option of either reopening her divorce action or holding her attorney responsible for what-appears-to-have-been her inadequate representation in that action. As noted above, the petitioner was unable or unwilling to follow up on either of those potential remedies.

"Home" is defined by W.A.M. § 2302.13 as follows:

> A "home" is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.
>
> The child(ren) and relative normally share the same household. A home shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

When there is some question as to where the child's home is for ANFC-related purposes, such as in a joint custody case, the Board has held (and the Vermont Supreme Court has affirmed) that it is the parent that provides the primary "home" for the children who is eligible for ANFC (now RUFA). Fair Hearing No. 5553; Aff'd, Munro-Dorsey v. D.S.W., 144 Vt. 614 (1984). This ruling has been followed in all ANFC-related Medicaid cases as well. Fair Hearing Nos. 19,197, 18,205, 16,907, 15,433, 14,613, and 11,182.

As noted above, there is no question in this case that the petitioner's ex-husband has been granted sole physical custody of the children, and that the children, in fact, spend a majority of their time in their father's home. Unless and until it can be shown that the children are living

in the petitioner's home at least 50 percent of the time, the petitioner cannot categorically qualify for Medicaid as their primary caretaker relative.[3]

For the above reasons the Department's decisions in this matter must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 1000.4D.

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[3] The Board has also held that the fact that the father may not have applied for benefits for himself does not alter the above analysis. See Fair Hearing Nos. 18,205 and 10,732.